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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,935	08/02/2001	Brigitte Bathe	211712US0X	5782
22850	7590	06/16/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			HUTSON, RICHARD G	
			ART UNIT	PAPER NUMBER
			1652	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/919,935

Applicant(s)

BATHE ET AL.

Examiner

Richard G Hutson

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 34-58.

Claim(s) withdrawn from consideration: 9-33.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



Richard G Hutson, Ph.D.
Primary Examiner
Art Unit: 1652

Continuation of 2. NOTE: Applicants proposed change to claim 34 part b, from "a polynucleotide which encodes a fragment of a polypeptide which is at least 90% identical to SEQ ID No: 2 and which has methylene tetrahydrofolate reductase activity" to a polynucleotide which encodes a polypeptide which has methylene tetrahydrofolate reductase activity, wherein said polypeptide is at least 90% identical to a fragment of SEQ ID No: 2 would require additional consideration and/or search as applicants amendment would result in a change of the claimed genus. Further, applicants proposed amendment is different in scope then that previously interpreted by the examiner as stated in the previous office action under 112 second paragraph rejection, "a polynucleotide which encodes a fragment of a polypeptide, wherein said polypeptide is at least 90% identical to SEQ ID No: 2 and which has methylene tetrahydrofolate reductase activity". Applicant is reminded that a single amino acid such as glutamine or alanine is encompassed by a fragment of a polypeptide.

Continuation of 5. does NOT place the application in condition for allowance because: the rejections of record remain in light of the nonentry of applicants proposed amendment. Applicants traversal of the current 112 first paragraph rejection based on a lack of enablement is acknowledged, however found nonpersuasive. Applicants attention is drawn to applicants description of the breadth of the claims, in which applicants state that the claims are directed to sequences which are 90% identical to SEQ ID NO: 1 or SEQ ID NO: 2, as applicants proposed claims are drawn to sequences which encode a polypeptide which is at least 90% identical to "a fragment of" SEQ ID NO:2. Further applicants comments regarding the state of the prior art is somewhat confusing as the invention in question is to an isolated polynucleotide which encodes a methylene tetrahydrofolate reductase polypeptide, not a method of fermentative production of amino acids in *Corynebacteria*. Further applicants "working examples" presented appear to be to the production of a bacterial strain, not how to make and use the claimed polynucleotides..